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Supreme Court, U.S.
FILED
OCT 23 1987
JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

IN THE UNITED STATES SUPREME COURT

OCTOBER TERM, 1987

MELVIN R. HORNE,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

APPENDIX TO
PETITION FOR WRIT OF CERTIORARI

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BEST AVAILABLE COPY

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I. CONSTITUTIONAL AND STATUTORY PROVISIONS

A. Constitutional Provisions

United States Constitution

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense. (emphasis added).

B. Statutory Provisions

18 U.S.C. §371

Conspiracy to commit offense or to defraud United States.

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is as misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

II. RECORD SHOWING PROPER AND TIMELY RAISING OF FEDERAL QUESTIONS

A. Defendant's Written Requested Jury Instructions (R7-275).

B. Charge Conference (R40-25).

C. Defendant's Motion for New Trial - Good Faith Objection [R8-305-¶16(d)].

III. OPINIONS OF LOWER COURT:

A.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 85-3927

D.C. Docket No. 84-7023

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MELVIN R. HORNE,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Florida

(July 2, 1987)

Before TJOFLAT and VANCE, Circuit Judges, and ALLGOOD*, Senior District Judge.

PER CURIAM:
AFFIRMED. See Circuit Rule 25.

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*Honorable Clarence W. Allgood, Senior U.S. District Judge for the Northern District of Alabama, sitting by designation.

Judgment Entered: July 2, 1987
For the Court: Miguel J. Cortez, Clerk

By: /S/ David Maland
Deputy Clerk
ISSUED AS MANDATE: Oct. 05, 1987

B.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 85-3927

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MELVIN R. HORNE,

Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Florida

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ON PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC (Opinion July 2, 1987, 11 Cir. 198__, _____F.2d_____).

(August 24, 1987)

Before: TJOFLAT and VANCE, Circuit Judges, and ALLGOOD*, Senior District Judge.

PER CURIAM:

(X) The Petition for Rehearing is DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 26), the Suggestion for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/S/ Robert S. Vance

United States Circuit Judge

*Honorable Clarence W. Allgood, Senior U.S. District Judge for the Northern District of Alabama, sitting by designation.

IV. JUDGMENT AND DECREE SOUGHT TO BE REVIEWED:

NORTHERN DISTRICT OF FLORIDA

MELVIN R. HORNE DOCKET NO. TCR 84-07023

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date -- November 26, 1985.

Counsel -- XX With Counsel Gregory Wilson

Plea -- X Not Guilty

Finding & Judgment: There being a verdict of X GUILTY. Defendant has been convicted as charged of the offenses of Violating Title 18, United States Code, Sections 371, 1343, 1341, and 1952(a)(1), as charged in Counts 1, 2, 7, and 12 of the Indictment.

Sentence or Probation Order: The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the

contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and order that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of five (5) years, on Count 1.

Special Conditions of Probation

On Count 2, the defendant is committed to the custody of the Attorney General for a period of five (5) years. Execution of sentence is suspended and the defendant is placed on probation for a period of five (5) years, to begin at the conclusion of the sentence imposed in Count 1.

On Count 7, the defendant is committed to the custody of the Attorney General for a period of five (5) years. Execution of

sentence is suspended and the defendant is placed on probation for a period of five (5) years, to run concurrently with the probation imposed in Count 2.

On Count 12, the defendant is committed to the custody of the Attorney General for a period of five (5) years. Execution of sentence is suspended and the defendant is placed on probation for a period of five (5) years, to run concurrently with the probation imposed in Counts 2 and 7.

All probation is to run consecutive to the sentence of imprisonment imposed in Count 1.

The defendant may voluntarily surrender, at his own expense, to the designated institution, or if designation is not made prior to January 3, 1986, the defendant

shall surrender to the U. S. Marshal, Tallahassee, Florida, 12:00 noon, January 3, 1986.

Additional Conditions of Probation

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

FILED NOV. 26, 1985

Signed by

X U. S. District Judge /S/ Maurice M. Paul
MAURICE M. PAUL
Date 11/26/85

V. OTHER RELEVANT PORTIONS OF THE RECORD

A. U.S. Eleventh Circuit, District Judges Association, Pattern Jury Instructions:

4.1

GENERAL CONSPIRACY CHARGE

18 U.S.C §371

Title 18, United States Code, Section 371, makes it a separate Federal crime or offense for anyone to conspire or agree with someone else to do something which, if actually carried out, would amount to another Federal crime or offense. So, under this law, a "conspiracy" is an agreement or a kind of "partnership" in criminal purposes in which each member becomes the agent or partner of every other member.

In order to establish a conspiracy offense it is not necessary for the Government to prove that all of the people named in the indictment were members of the scheme; or that those who were members had entered into any formal type of agreement; or that the members had planned together all of the details of the scheme or the

"overt acts" that the indictment charges would be carried out in an effort to commit the intended crime.

Also, because the essence of a conspiracy offense is the making of the agreement itself (followed by the commission of any overt act), it is not necessary for the Government to prove that the conspirators actually succeeded in accomplishing their unlawful plan.

What the evidence in the case must show beyond a reasonable doubt is:

First: That two or more persons, in some way or manner, came to a mutual understanding to try to accomplish a common and unlawful plan, as charged in the indictment; (emphasis added)

Second: That the Defendant willfully became a member of such conspiracy;

Third: That one of the conspirators during the existence of the conspiracy knowingly committed at least one of the methods (or "overt acts") described in the indictment; and

Fourth: That such "overt act" was knowingly committed at or about the time alleged in an effort to carry out or accomplish some object of the conspiracy.

An "overt act" is any transaction or event, even one which may be entirely innocent when considered alone, but which is knowingly committed by a conspirator in an effort to accomplish some object of the conspiracy.

A person may become a member of a conspiracy without knowing all of the details of the unlawful scheme, and without knowing who all of the other members are. So, if a Defendant has an understanding of the unlawful nature of a plan and knowingly and willfully joins in that plan on one occasion, that is sufficient to convict him for conspiracy even though he did not participate before, and even though he played only a minor part.

Of course, mere presence at the scene of a transaction or event, or the mere fact that certain persons may have associated with each

other, and may have assembled together and discussed common aims and interests, does not necessarily establish proof of a conspiracy. Also, a person who has no knowledge of a conspiracy, but who happens to act in a way which advances some purpose of one, does not thereby become a conspirator.

B.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

UNITED STATES OF AMERICA,

vs. CASE NO. TCR 84-07023-MMP

MELVIN R. HORNE,

Defendant.

COURT'S INSTRUCTIONS
TO THE JURY (R8-297)

What the evidence in the case must show beyond a resonable doubt is:

First: That two or more persons, in some way or manner, came to a mutual understanding to try to accomplish a common and unlawful plan, as charged in the indictment;

Second: That the Defendant willfully became a member of such conspiracy;

Third: That one of the conspirators during the existence of the conspiracy knowingly committed at least one of the methods (or "overt acts") described in the indictment; and

Fourth: That such "overt act" was knowingly committed at or about the time alleged in an effort to carry out or accomplish some object of the conspiracy.

An "overt act" is any transaction or event, even one which may be entirely innocent when considered alone, but which is knowingly committed by a conspirator in an effort to accomplish some object of the conspiracy.

A person may become a member of a conspiracy without knowing all of the details of the unlawful scheme, and without knowing who all of the other members are. So, if a defendant has an understanding of the unlawful nature of a plan and knowingly and willfully joins in that plan on one occasion, that is sufficient to convict him for conspiracy even though he did not participate before, and even though he played only a minor part.

Of course, mere presence at the scene of a transaction or event, or the mere fact that certain persons may have associated with each other, and may have assembled together and discussed common aims and interests, does not necessarily establish proof of a conspiracy. Also, a person who has no knowledge of a

conspiracy, but who happens to act in a way which advances some purpose of one, does not thereby become a conspirator.

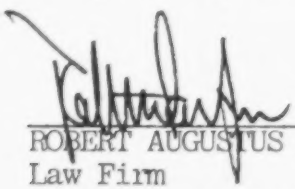
If you find a defendant guilty of conspiracy as charged in Count I, you may also find that particular defendant guilty of a substantive offense, in this instance mail fraud, wire fraud and foreign travel in aid of racketeering, provided that the evidence as to these substantive offenses proves the substantive offense beyond a reasonable doubt, shows that the offense was committed by a member of the conspiracy pursuant to the conspiracy and that at the time it was committed the particular defendant was a member of the conspiracy. So it is that a defendant may be found guilty of a substantive offense even though he did not participate in the act constituting the offense. The reason for this is that under the law, a member of a conspiracy who commits a substantive offense pursuant to a conspiracy is the agent of all who are then members of the conspiracy and all who are members may be found

guilty on account of the conduct of their agent, their fellow member of the conspiracy.

VI. CERTIFICATE OF SERVICE

I, Robert Augustus Harper, a member of the Bar of this Court, hereby certify that on this 8th day of December 1987 three copies of the foregoing Appendix to Petition for Writ of Certiorari were mailed, first class postage prepaid to Kenneth Sukhia, Esquire, 227 North Bronough Street, Suite 4014, Tallahassee, Florida 32301, counsel for all the respondents herein. I further certify that on this 8th day of December 1987 three copies of the foregoing Appendix to Petition for Writ of Certiorari were mailed, first class postage prepaid, to Charles Fried, Esquire, Solicitor General, The Department of Justice, Washington, D.C. 20530.

Respectfully submitted,



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